

# COUNTY OF YORK



## ROADSIDE SOLID WASTE PICKUP CONTRACT

BETWEEN

COUNTY OF YORK  
DEPARTMENT OF ENVIRONMENTAL AND  
DEVELOPMENT SERVICES

AND

BFI WASTE SYSTEMS OF NORTH AMERICA, INC.

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## AGREEMENT

THIS AGREEMENT, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 1999, by and between the County of York, a political subdivision of the Commonwealth of Virginia (hereinafter called the "County"), and BFI Waste Systems of North America, Inc., a corporation organized and existing under the laws of the State of Delaware (hereinafter called "BFI").

### WITNESSETH:

WHEREAS, BFI did on the 29th day of October 1999, submit a Proposal to provide Solid Waste Collection (SWC) within the County and to perform such work as may be incidental thereto.

NOW, THEREFORE, in consideration of the following mutual agreements and covenants, it is understood and agreed by and between the parties hereto as follows:

1. BFI shall furnish all personnel, labor, equipment, trucks, and all other items necessary to provide Residential Solid Waste Collection and Disposal services as specified in the Contract Documents.
2. The Contract Documents shall include the following documents, and this Agreement does hereby expressly incorporate the same herein as fully as if set forth verbatim in this Agreement:
  - a. The Request for Proposals (RFP #1058) issued by York County dated October 29, 1999.

- b. BFI's Proposal, dated February 10, 1992.
- c. The resolution of the County ordering or authorizing the work and services contemplated herein.
- d. The Performance Bond.
- e. Certificate of Insurance.
- f. This instrument.
- g. Any addenda or changes to the foregoing documents agreed to by the parties hereto.

In the event of a conflict in the terms of the aforementioned documents and this Agreement, the terms of this Agreement shall prevail.

- 3. All provisions of the Contract Documents shall be strictly complied with and conformed with by BFI, and no amendment to this Agreement shall be made except upon the written agreement of the parties.

#### **SECTION 1. DEFINITIONS.**

For purposes of this Agreement, the following terms shall apply:

**Bulky Items:** Normal Household items too large to be placed in the County Furnished Container and including such items as stoves, refrigerators, hot water tanks, washers, dryers, up to 6 rolls of carpet, a set of box spring and mattress,

regular size doors, lawn mowers, grills, or other normal Household or business furniture. Bulky items do not include dead animals, stable materials, hazardous waste (e.g., batteries), tires, construction or renovation debris or other items too heavy and/or too bulky to be handled by a two-man crew.

**Container:** Either a County Furnished Container or an approved subscriber-supplied container.

**Cost Index:** The U.S. Department of Labor Statistics Consumer Price Index for all Urban Consumers, South Area Class "C" Transportation.

**County-Designated Personnel:** The County Administrator, designated County employees or agents.

**County Furnished Container:** County furnished wheeled waste Container of an approximate volume of 96 gallons for each designated Home or Qualified Small Business, as needed, usually referred to herein as "Containers".

**Disposal Facility:** York County Transfer Station located at 145 Goodwin Neck Road.

**Force Majeure:** Any cause beyond the reasonable control of the party whose performance under this Agreement is affected, including but not limited to acts of God, war, riot, fire, explosion, wind storm, flood or action by governments not party to this Agreement. Force Majeure shall not include strikes, labor disputes, or equipment failure.

**Household:** A single detached family home, trailer or duplex that can be serviced by a standard County Furnished Container with the exception of those located on federal property.

**Improperly Placed Container:**

- (1) A Container placed at a location not adjacent to the roadside (except in the event of construction)
- (2) A Container which because of the weight of its contents; i.e., greater than 100 pounds or whose contents would damage the Container or collection vehicles.
- (3) A Container in which dangerous waste such as poisons, acids, caustics, manure, human excreta, or explosives have been placed.

**Long Driveway:** A driveway that is greater than 150 feet in length measured from the edge of the right-of-way to the front of the Household.

**Private Lane:** A lane listed in the York County Street Index as private which is typically designated with a yellow street sign.

**Qualified Small Business:** A licensed small business operation or tax exempt organization capable of using a County furnished Container(s) or an acceptable privately furnished Container for solid waste disposal.

**Resident Furnished Container:** Resident furnished container or containers consisting of disposable plastic bags or standard residential trash containers not to exceed 40 gallons in size.

**Roadside:** That portion of the right-of-way adjacent to the paved or traveled public roadway, or adjacent to private lanes. When construction work is being performed in the right-of-way, Containers will be placed as close as practicable to an access point for the collection vehicle.

**Service Area:** All of the County of York, Virginia.

**Solid Waste:** As defined in section 3.1 of the Solid Waste Management Regulations VR 672-20-10, Department of Environmental Quality, Commonwealth of Virginia.

**Solid Waste Collection Services:** Collection of Household and Qualified Small Business solid waste by BFI.

**Solid Waste Materials:** Solid waste, approved bags/bundles, or Bulky Items.

**Yard Waste:** Grass, leaves, and brush placed in a disposal bag or tied in a bundle.

## **SECTION 2. TERM OF AGREEMENT.**

- 2.1 The term of the Agreement shall commence on March 1, 2000 and terminate at the close of business on June 30, 2004.

### **SECTION 3. SCOPE OF SERVICES.**

BFI shall exclusively perform the Roadside Solid Waste Collection Services in the County as follows:

- 3.1 BFI shall deliver Containers to the front of every Household and Qualified Small Businesses as they contract with the County for waste collection services along with County supplied program instructions. The Containers shall be delivered no later than the week following the County's notification of BFI of the new location(s). BFI will also recover Containers when a Household or Qualified Small Business cancels their service with the County.
- 3.2 BFI shall collect and remove all Solid Waste Materials from program subscribers placed in or adjacent to the Containers at the Roadside or from some other specifically defined location as designated by both parties and located in the County. Collection services shall be provided once per week. Every single-family detached Household in York County excluding those on federal property shall be eligible for service under this Agreement. In addition, other Households including trailers, duplexes, those on federal property, and Qualified Small Businesses and non-profit agencies that can be collected, by mutual consent between the County and BFI, shall be collected under this Agreement. The approximate number of subscribers to the Roadside Solid Waste Collection Program is 13,200.

BFI shall collect the contents of the Container plus up to six (6) bags/bundles. The bags shall be tied, plastic disposable bags not to exceed 40 lbs. in weight. Bundles should be tied and should not exceed 4-feet in length and 75 lbs. in weight. The bags shall not be provided by BFI.

"Yard Waste" is expressly agreed to be outside the scope of the Agreement (excepting Yard Wastes that can be contained and collected in clear, disposable plastic bags and/or is bundled as described in the preceding paragraph).

In the event that a Container is improperly set out for collection by a resident, BFI may decline to collect any Container improperly placed after providing one warning notice. The warning notice, or other notice, explaining the reason for BFI's decision not to collect the Solid Waste Materials shall be given through the use of a tag which BFI shall attach to the Container. BFI will notify the County's Waste Management staff of said incidents.

Solid waste rejected at Roadside will be left with a "Reject" tag attached to the Container to identify the reason for the rejection to the resident. Such tag shall be provided by BFI and approved by the County prior to its use. The tag must clearly identify the reason for the rejection.

Collection routes will be coordinated with the County's recycling collection days *as closely as possible without detracting from BFI's operational efficiencies*. The County shall be responsible for providing BFI with the recycling routes. BFI shall not be responsible for collecting the recyclable material.

As part of the service provided under this Agreement, BFI agrees to provide "back yard" collection service to residents who, due to medical reasons or advanced age, are unable to carry the Container to the Roadside, for up to three (3) percent of the Households serviced. Requests for the "back yard" service shall be approved by the County and, if appropriate, the County will direct BFI to provide such service. These residents being provided "back yard" service should, when practical, place additional bags/bundles at the curbside.



The recipient household addresses will be maintained on a special listing provided to collection crews on each route. Failure by BFI to provide "back yard" collection service to designated residences will be excused by the County where access to the back yard is impeded by gates when latches are either inoperative, locked or tied; and/or when a dog is loose tied near, or blocks free access to the premises yard where the Container has been placed.

- 3.3 BFI agrees to provide "backyard" and "long driveway" services as described in this section if directed by the County at the rate per location as outlined in Exhibit A. These residents electing "back yard" service must place additional bags/bundles at the Roadside. This "back yard" service is intended for Households located a nominal distance from the Roadside (driveways no longer than 75 feet in length). BFI will provide "back yard" service for Households with driveways from 75 feet to 150 feet in length for up to 30 percent of the additional three percent allocation referenced in Section 3.2. For example, if the number of Households being serviced is 13,200, the number of Households eligible for "back yard" service would be 396. Thirty percent of 396, or 119 could have driveways from 75 feet to 150 feet in length and be eligible for service under this paragraph.

The addresses of "back yard" collection residences shall be provided to BFI, as approved by the County.

The recipient Household addresses will be maintained on a special listing provided to collection crews on each route. Failure by BFI to provide "back yard" collection service to designated residences will be excused by the County where:

- 1) Access to the back yard is impeded by gates when latches are either inoperative, locked or tied; or
- 2) A dog is loose, tied near, or blocks free access to the premises yard where the Container has been placed.

BFI shall provide the County a listing of the "back yard" collections by address and this list shall be kept current on a monthly basis.

In the event the County receives more applications for "back yard" pickup than the allowed number provided for under this Agreement, the County shall determine which Households qualify for "back yard" collection.

BFI will provide Long Driveway service to Households that have driveways greater than 150 feet in length, where the resident does not wish to move the Container to the Roadside for collection. The resident would place the Container alongside of the driveway at the residence rather than the Roadside for collection. BFI will provide collection services for these Households with a lightweight collection vehicle (not to exceed 10,000 pounds gross weight). BFI will not be liable for damages to the driveway.

BFI will, upon the request of the County, deliver additional County Furnished Containers to those Households/Qualified Small Businesses that generate more trash than can be accommodated by one Container.

- 3.4 Bulky Items. Collection of Bulky Items that do not fit into the provided Container shall be as included in the Scope of Services with the following limitations:

New residents to a Household will be authorized a bulk pick-up of up to fifteen (15) boxes in addition to the conditions in 3.2 at no additional charge. BFI will also provide a separate one-time collection of Christmas trees during the first full week after the New Year's holiday for all subscribers. Trees will be delivered to the VPPSA Compost Facility at no cost to BFI.

Bulky Item collection of Solid Waste Materials at each Household or Qualified Small Business is limited to two (2) items per collection and three (3) collections per year.

York County will provide for disposal of the white goods collected under this program at a location in the County's Waste Management complex on Goodwin neck Road. Further, the County will provide for proper disposal of Chlorofluorocarbons (CEC's) from bulk collection items (air conditioners, refrigerators, etc.). For the purpose of this agreement, white goods are defined as residential washers, driers, refrigerators, freezers and air conditioning units.

Residents should call prior to close of business at 5.00 p.m. on Friday to schedule bulky item collection for the following week. It is sometimes possible for bulky items to be collected on their normal service day. Residents will be so advised when they call to schedule bulky collections.

3.5 Collections Services. All Solid Waste shall be collected in a neat, clean and workman-like manner. BFI employees shall not behave in a manner which is noisy, vulgar, obscene or insulting.

3.6 Spillage. BFI shall load vehicles in such a manner as to prevent spillage of the Solid Waste. Any spillage shall be immediately cleaned up by BFI. All

Containers shall be handled as carefully and quietly possible, being returned (not thrown) to the location where picked up. All Solid Waste hauled by BFI shall be so contained, tied or enclosed that leaking, spilling or loss from wind-blown materials is prevented.

- 3.7 Collection Equipment. BFI shall provide an adequate number of vehicles for collection services as outlined in BFI's proposal. All vehicles and other equipment shall be maintained in good repair, acceptable appearance, and in a sanitary condition at all times. Each vehicle shall have, clearly visible, on each side, the company identity, telephone number of the company, and a conspicuous vehicle number. The colors of the collection equipment shall be blue and white.

#### **SECTION 4. PROGRAM REPORTS.**

Reports shall be prepared by BFI and provided to the County to provide data upon which to evaluate Roadside collection programs. Collection of data for these reports is necessary for the optimum development of the program. Data provided shall be factual, and accurate to the best ability of BFI. The following are the minimum required reports, with additional reports to be prepared at the option of BFI.

- 4.1 24-Hour Reports: The County shall be notified by BFI of significant events when they occur. Significant events shall include missed collection of more than five (5) percent of any neighborhood area, any occurrence of private property damage, or any personal injury to a member of the general public (not including collection crews) resulting from the collection and transportation operation.

4.2 Monthly Reports. BFI shall submit to the County monthly reports including the following information:

- a. Weights of materials collected, by route. Weighing of Solid Waste collected by route shall be performed daily. Along with the monthly weights from each route, BFI shall provide general comments regarding changes from previous months, or comparisons between high and low volume areas.
- b. Household/Qualified Small Business Count. The monthly report shall include a summary of Household/Qualified Small Business count by route including:
  - 1) Households/Qualified Small Businesses added during period
  - 2) Households/Qualified Small Businesses subtracted during period
  - 3) Total Households/Qualified Small Businesses at end of period
- c. Complaint Log. Copies of all complaints received during the month, and the corrective actions taken, shall be delivered to the County. A written summary of log information shall be provided monthly describing the number, type, and significance of complaints received, and suggested program improvements to preclude future complaints of a similar nature. Copies shall be provided of the on-board log documenting the Household/Qualified Small Business addresses and dates of issuance of warning tags, as well as the numbers of replaced County Furnished Containers provided to residents in the collection area. A written summary of this log information shall be provided describing the number, reasons, and pattern (e.g. geographic location, reasons for rejection, reasons for

issuance of replacement Container, etc.) of warning notices or County  
Furnished Containers given out during the previous month.

4.3 Quarterly Reports. Reports containing the following shall be as agreed to by BFI and the County, but shall be provided at a minimum on a quarterly basis:

- a. Container Count. Information from monthly reports will be summarized.
- b. Recommended Collection Improvements. BFI shall provide timely recommendations of the best available methods to improve collection procedures or to collect at least cost. Such recommendations may or may not be incorporated into the collection program at the sole option of the County. Any recommended changes to collection procedures shall be implemented only upon written agreement between the parties by amendment to this Agreement.

4.4 Copies of the daily routes and of the total customer list will be supplied to the County periodically and on special request. Daily routes shall include the addresses of all the program's customers and designate which households are receiving special services and which type of special service. The customer list shall also contain the above information but shall be provided in alphabetical order by address when requested. At the end of each week, a bulk collection listing those scheduled bulk pick ups that could not be collected, along with the reason for non-collections should be faxed to the County for record keeping purposes.

4.5 Annual Program Review. On or about July of every year of this Agreement, an Annual Program Review Meeting will be held by the County and BFI to evaluate the program and to develop recommendations for improvements to the reports.

## **SECTION 5. IMPLEMENTATION AND EXPANSION OF SERVICES.**

Verification of Household/Qualified Small Business Count. BFI shall furnish the County with the initial Household/Qualified Small Business count derived from the number of County Furnished Containers delivered as well as those provided in the previous contract. This count shall list route, street, and house number(s). The County will verify the Household/Qualified Small Business Count within 12 months following receipt of the list of residences being serviced. Should the count not be verified by the County, BFI must show to the County's reasonable satisfaction the existence of the disputed Household/Qualified Small Business Count. After the 12-month verification period, should the County not notify BFI of discrepancies in the Household/Qualified Small Business count, the count provided by BFI shall be accepted. Additions and deletions to the initial Household/Qualified Small Business Count shall be as follows:

During the term of this Agreement, BFI agrees to provide Roadside solid waste collection service to newly constructed and occupied Households located in the County as well as additional Qualified Small Businesses. The County will be responsible for notifying BFI of new Household addresses and the apparent occupancy status of the Household as well as additional Qualified Small Businesses requesting such service. After notification, BFI will be authorized to provide the County Furnished Container to initiate collection service delivery to the new households and Qualified Small Businesses. BFI may adjust the monthly billing by the per Household/Qualified Small Business rate to reflect the additional number of Households/Qualified Small Businesses included in the program.

## **SECTION 6. TIME OF COLLECTION.**

- 6.1 Roadside. BFI shall collect the Solid Waste Materials set out (either at the Roadside or in the back yard) for collection once each week. Collection shall normally be done between the hours of 7:00 a.m. and 5:00 p.m. weekdays on a schedule approved by the County; and BFI may, with the approval of the County, collect on Saturday to provide services to Households/Qualified Small Businesses during a week when a normal collection day falls on a holiday or when collection(s) are missed due to weather conditions.

## **SECTION 7. ROADSIDE CONTAINER.**

- a. BFI shall acquire quotes from up to three companies chosen by the County for the purchase of Containers for this collection program. The County reserves the right to select its official Container from the quotes provided.
- b. BFI shall be responsible for the purchase of the County's official Container and shall maintain a minimum inventory of 100 Containers. BFI will purchase additional Containers as needed (approximately 360 Containers per order) and shall bill the County for their cost. The County shall reimburse BFI within 30 days of receipt of bill.
- c. BFI shall be responsible for the storage, delivery and collection of the Containers as directed by the County. All records associated with Container inventory delivery or collection of these Containers shall be maintained by BFI.



- d. BFI shall deliver to each new Household or Qualified Small Business, one (1) official County Container within one week of County notification.

BFI shall replace Containers within two (2) working days after notification by the County or its representative that a Container is damaged or missing.

- e. BFI shall collect official County Containers from residences that discontinue service within two weeks of County notification.

Title to all County Furnished Containers distributed to Households/Qualified Small Businesses and all Containers held by BFI in reserve supply shall be vested in the County at the completion of termination of this Agreement.

#### **SECTION 8. HOLIDAYS.**

The following days shall be considered holidays for the purpose of this Agreement:

New Year's Day

Thanksgiving Day

Christmas Day

BFI will observe these three holidays. In order to ensure each residence is provided their weekly collection service, those residents whose normal collection day falls on a holiday shall receive collection on the following Saturday. All other collection days will remain unchanged. The schedule will revert back to its normally scheduled collection days in the week following the holiday week.

## **SECTION 9. COMPLAINTS AND MISSED PICK-UPS.**

9.1 Unless otherwise directed, all complaints from Households/Qualified Small Businesses shall be made directly to the County. The County shall provide BFI with a written form specifying the nature of the complaint. Each complaint shall be given prompt and courteous attention upon BFI being notified.

- A. All complaints received by BFI before noon shall be addressed by the end of the collection day.
- B. Complaints received after noon shall be addressed by noon of the following collection day.
- C. In the case of complaints received on Friday or before a holiday, BFI shall make every effort to resolve the complaint on the day received.
- D. The complaint form shall be returned by fax to the County with a description of actions taken by BFI by the end of the collection day following the day of the complaint.

All calls relating to complaints and missed pick-ups shall be logged by BFI as required by Section 4.2 of this Agreement.

9.2 BFI will be required to maintain an office in York County for the purpose of providing a contact point for the County as follows:

- A. Office Staff
  - 1. Whenever collection vehicles are operating, BFI shall provide adequate central office staffing to answer questions from the County

and to take and respond to service requests by phone, Fax and e-mail.

2. The central office staff shall be able to contact each of the collection vehicles via radio or cellular phone for resolving complaints or answering questions.
3. BFI shall be required to provide a toll-free phone number for the entire service area.

B. Operations Supervisor

1. The York County office shall also serve as a base of operations for the operations supervisor.
2. The operations supervisor shall have transportation equipped with a cellular phone in order to monitor collections, receive and respond to complaints, answer inquiries, and resolve disputes with respect to the services provided pursuant to this Agreement.
3. The County shall have the right to review with BFI the performance of the operations supervisor and to request changes in personnel if it is demonstrated that the customer service/relation functions of BFI do not meet the County's specifications.

9.3 BFI shall also maintain on-board logs in each collection vehicle used in performance of this Agreement for the purpose of recording the customers address and date of issuance of either a Container warning or rejection sticker to a resident as well as the reason for rejection. A log will be used to record the address of all

Households/Qualified Small Businesses which have received a replacement Container due to theft or damage of the original Container provided.

- 9.4 BFI shall immediately notify the County-Designated Personnel of private property damage, or any personal injury to a member of the general public (not including collection crews) resulting from the collection and transport operation.

#### **SECTION 10. DISPOSAL FACILITY.**

All waste will be disposed of at the York County Transfer Station at 145 Goodwin Neck Road or, in the event of an emergency, at a facility designated by the County within a ten-mile radius of the existing York County waste facility. BFI will not be charged for disposal.

#### **SECTION 11. LABOR AND COSTS.**

BFI shall, at its sole cost and expense, except as otherwise provided herein, furnish all labor and equipment required to perform Roadside collection.

#### **SECTION 12. COUNTY'S REPRESENTATIVE.**

For this Agreement, the County has designated the County Administrator as its representative and has empowered the County Administrator or his designee with the authority necessary to administer the provisions of this Agreement.

### **SECTION 13. BFI'S REPRESENTATIVE.**

BFI shall assign qualified persons to be in charge of its services described herein, and agrees to give the names of such persons to the County no later than the beginning of collection operations. At a minimum a responsible supervisor with a vehicle shall be assigned. The supervisor shall be available to monitor collections, receive and respond to complaints, answer inquiries, and resolve disputes with respect to the services provided pursuant to this Agreement. The supervisor's vehicle shall be equipped with a cellular telephone in order to receive complaints and inquiries from the County.

### **SECTION 14. COMPENSATION FOR SERVICES.**

- 14.1 The County agrees to make monthly payments to BFI, within thirty days of receipt of a billing invoice for service rendered by BFI under this Agreement for the previous month.

Payment for collection services shall be based on the number of Households/Qualified Small Businesses contracting with the County for the level of services provided at the following rates:

<u>Service Type</u>	<u>Monthly Cost Per Household</u> <u>Effective March 1, 2000</u>
Basic Service:	\$5.78 (includes allowed back-yard handicap service)
Back Yard Collection (non-handicap)	\$8.67
Long Driveway Collection	\$11.56
Extra Container	\$4.00

These fixed fees shall be adjusted on July 1, 2001 and on July 1 of each year thereafter during the term of this Agreement in an amount equal to any increase or decrease in the Cost Index for the twelve (12) month period prior to the date of the adjustment. No annual increase under this provision shall exceed six percent (6%).

- 14.2 Upon execution of this Agreement by both parties, BFI will revise the rates presently in effect for roadside waste collections to the new rates in Section 14.1 above, effective as of November 1, 1999.
- 14.3 BFI's billing invoice will not be considered by the County to be complete and payable if it fails to include the appropriate monthly and quarterly reports specified in Section 4 of this Agreement. Failure by BFI to include specified reports shall be deemed by the County as cause to withhold payment for the previous month of Solid Waste Collection Service by BFI until such time as the required reports are received by the County. BFI shall mail the County its invoice for services rendered within ten (10) days following the end of the preceding month.

## **SECTION 15. NON-APPROPRIATION.**

The Solid Waste Collection program governed by this Agreement is funded solely through funds appropriated annually by the County. Failure by the County to appropriate the funds necessary to cover the cost of the County's obligations under this Agreement shall terminate BFI's obligation to provide service under this Agreement. Failure to appropriate funds shall not be a breach or default under this Agreement and BFI's sole remedy shall be the right to terminate this Agreement.

#### **SECTION 16. PERMITS AND LICENSES.**

BFI, at its sole cost and expense, shall maintain throughout the term of this Agreement all permits, licenses and approvals necessary or required for BFI to perform the work and services described herein, as required by Chapter 19 of the York County Code.

#### **SECTION 17. COMPLIANCE WITH LAWS AND REGULATIONS.**

BFI agrees that in its operation of Solid Waste Collection Services and the performance of other work and services required of it under this Agreement, BFI will qualify under and comply with any and all federal, state and local laws and regulations now in effect, or hereafter enacted during the term of this Agreement, which are applicable to BFI, its employees, agents or subcontractors, if any, with respect to the work and services described herein.

#### **SECTION 18. LAW TO GOVERN.**

This Agreement is entered into and is to be performed in the Commonwealth of Virginia. The County and BFI agree that the laws of the Commonwealth of Virginia shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and shall govern the interpretation of this Agreement.

#### **SECTION 19. INDEPENDENT CONTRACTOR.**

BFI shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of the County. Except as otherwise provided under this Agreement, BFI shall have exclusive control of

and the exclusive right to control the details of the services and work performed hereunder and all persons performing the same, and nothing herein shall be construed as creating a partnership or joint venture between the County and BFI. No person performing any of the work or services described hereunder shall be considered an officer, agent, servant or employee of the County, and no such person shall be entitled to any benefits available or granted to employees of the County.

#### **SECTION 20. SUBCONTRACTORS.**

BFI hereby agrees that no subcontractor will be used to perform any of the services to be provided to the County under this Agreement without written approval of the County. BFI further agrees that any subcontractor shall meet all County requirements imposed on BFI. BFI may use temporary employees from temporary employment agencies.

#### **SECTION 21. NON-ASSIGNMENT.**

Neither BFI nor the County shall assign, transfer, convey, or otherwise hypothecate this Agreement or their rights, duties or obligation hereunder or any part thereof without the prior written consent of the other.

#### **SECTION 22. INSURANCE.**

BFI shall obtain and maintain throughout the term of this Agreement, at BFI's sole cost and expense, not less than the insurance coverage set forth below.



Worker's Compensation

Coverage A: Statutory Requirements  
Coverage B: \$100,000 per occurrence.  
Coverage C: \$100,000 / \$100,000 Accident and/or Disease  
AllStates Endorsement

Comprehensive Automobile Liability

Bodily Injury \$1,000,000 each person  
\$5,000,000 each occurrence  
Property Damage \$1,000,000 each occurrence  
**To include coverage for all owned, non-owned, leased and hired automobiles.**

Comprehensive General Liability

Bodily Injury \$1,000,000 each person  
\$5,000,000 each occurrence  
Property Damage \$1,000,000 each occurrence  
Including:  
A. Completed operations/products  
B. Contractual liability for specified Agreements  
C. Personal injury  
D. (XCU) Explosion, collapse and underground coverage  
E. Broad form property damage

BFI shall deliver to the County, prior to the execution date of this Agreement, Certificates of Insurance from carriers licensed in the Commonwealth of Virginia acceptable to the County for the limits specified above, with the County named as additional insured. In addition, the insurer shall agree to give the County thirty (30) days written notice of its decision to cancel, change or fail to renew coverage.

## **SECTION 23. PERFORMANCE BOND.**

BFI shall furnish to the County a performance bond, in the form attached hereto when this Agreement is executed for the faithful performance and payment of this Agreement and all obligations arising hereunder during the first year of this Agreement in the amount of 100 percent of the contract amount (\$898,128). The bond shall be executed by a surety company licensed to do business in the Commonwealth of Virginia in a form acceptable to the County. A certificate from the surety company showing that the bond premiums are paid in full shall accompany the bond. The bond shall be extended annually thereafter 30 days in advance of the anniversary date in an amount equal to the total amount of consideration to be paid by the County under this Agreement for that year. BFI shall also furnish the bond required by chapter 19 of the York County Code.

## **SECTION 24. INDEMNIFICATION.**

- 24.1 BFI shall indemnify and hold the County, and its officers, agents and employees harmless from and against all claims, damages, losses and expenses, including attorney's fees, of whatever kind or nature arising out of or resulting from BFI's providing or failure to provide any construction, product, goods, or services required hereunder, including but not limited to any such claim, damage, loss or expense, that is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, including the loss of use resulting therefrom, or to economic loss; provided, however, that BFI's indemnification obligation hereunder shall be limited to claims, damages, losses, and expenses caused in whole or in part by any negligent act or omission of BFI, or any subcontractor (a "Subcontractor") performing work required by this Agreement,

or any one directly or indirectly employed by any of them or anyone for whose acts BFI or any Subcontractor may be liable. Bringing of a suit on one or more causes of action will not prejudice or bar subsequent suits on any other causes of action, whether it accrued before or after the first suit.

- 24.2 BFI's indemnification obligation in Section 24.1 of this Agreement, with respect to any and all claims by any employee or statutory employee of BFI, or any Subcontractor, or by anyone directly or indirectly employed by any of them, or anyone for whose acts BFI or Subcontractor may be liable, shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for BFI or any Subcontractor under Worker's Compensation Acts, disability benefit acts or other employee benefit acts.

## **SECTION 25. TERMINATION.**

- 25.1 In the event BFI defaults in the performance of any of the material, covenants or agreements to be kept, done, or performed by it under the terms of this Agreement, the County shall notify BFI in writing of the nature of such default. Within fifteen (15) days following such notice,
- a. BFI shall correct the default; or
  - b. In the event of a default not capable of being corrected within fifteen (15) days, BFI shall commence correcting the default within fifteen (15) days of the County's notification. The County will grant an extension providing that, in the County's judgment, BFI is diligently pursuing a correction.

25.2 If BFI fails to correct the default as provided above, the County, without further notice, shall have all of the following rights which the County may exercise singly or in combination, in addition to any other right or remedy allowed by law.

- a. The right to declare that this Agreement, together with all rights granted BFI hereunder, are terminated effective upon such date as the County shall designate; and
- b. The right to contract with others to perform the services otherwise to be performed by BFI, or to perform such services itself; and
- c. The right to pursue all legal and equitable remedies against BFI's or on its bond posted under Section 23 hereof to recover the costs, expenses, and losses by such default.

## **SECTION 26. NOTICES.**

All notices required or contemplated by this Agreement shall be personally served or mailed by U.S. Mail, Postage Prepaid - Return Receipt Requested, addressed to the parties as follows:

To the County:      County of York, Virginia  
                             County Administrator  
                             224 Ballard Street  
                             Post Office Box 532  
                             Yorktown, Virginia 23690

To BFI:                      District Manager  
                                    Browning-Ferris Industries  
                                    124 Greene Drive  
                                    Yorktown, Virginia 23692

or to such other persons and addresses as the parties may designate in writing.

## **SECTION 27. BFI'S RECORDS.**

BFI shall maintain its books and records related to the performance of this Agreement in accordance with the following minimum requirements:

- 27.1 BFI shall maintain any and all ledgers, books of account, invoices, vouchers and canceled checks, as well as all other records or documents evidencing or relating to charges for services, expenditures or disbursements borne by the County for a minimum period of five (5) years, or for any longer period required by law, from the date of final payment to BFI pursuant to this Agreement.
- 27.2 BFI shall maintain all documents and records which demonstrate performance under this Agreement for a minimum period of five (5) years, or for any longer period required by law, from the date of termination or completion of this Agreement.
- 27.3 Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time, during regular business hours, upon written request by the County Representative. The records shall be available to the County Representative at BFI's address indicated for receipt of notices in this Agreement.

## **SECTION 28. INSPECTIONS.**

BFI agrees to permit County-designated personnel to inspect its routes, disposal and hauling equipment, complaint logs, or procedures to the extent such facilities, equipment, etc. apply to the performance of this Agreement.

## **SECTION 29. WAIVER.**

A waiver of any breach of any provision of this Agreement shall not constitute or operate as a waiver of any other breach of such provision or of any other provisions, nor shall any failure to enforce any provision hereof operate as a waiver of such provision or of any other provision.

## **SECTION 30. FORCE MAJEURE.**

- 30.1 It is mutually understood and agreed by the parties that BFI shall be relieved of its obligation under this Agreement during any period or periods of time when Force Majeure renders impossible its performance under this Agreement. Upon the occurrence of an event of Force Majeure, BFI shall promptly give the County notice of its best, good faith estimate of the period of time it expects Force Majeure to render impossible its performance hereunder.
- 30.2 Should BFI be unable to render performance under this Agreement by reason of Force Majeure, the County shall have the right to secure another vendor to perform any or all portions of the service provided by BFI under this Agreement for the period of expected Force Majeure set forth in the notice from BFI described in Section 30.1. The County shall have the right to negotiate for

alternative service to be provided by any other vendor during Force Majeure. In the event the period of Force Majeure should end prior to the expiration of this alternative service Agreement, the County, in its sole discretion, shall have the right to continue service during the notice period with any alternate vendor procured during the notice period or instruct BFI to resume services notwithstanding anything herein to the contrary. The County shall resume service with BFI according to the terms of this Agreement after expiration of the notice period.

- 30.3 At any time that Force Majeure is in effect, it is understood by the parties to this Agreement that the County shall not be obligated to pay service fees to BFI for any or all service interrupted by reason of Force Majeure.

#### **SECTION 31. COMPLIANCE WITH EQUAL OPPORTUNITY.**

- 31.1 During the performance of this Agreement, BFI agrees as follows:

- A. BFI will not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin, except where religion, sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. BFI agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
- B. BFI, in all solicitations for advertisements for employees placed in behalf of BFI, will state that BFI is an equal opportunity employer.

C. Notices, advertisements and solicitations placed in accordance with Federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

31.2 BFI shall comply with Executive Order No. 11246, entitled "Equal Employment Opportunity" as supplemented in Department of Labor Regulation (41 CFR, Part 60). During the performance of this Agreement, BFI, for itself, its assignees and successors in interest, agrees to comply with Title VI of the Civil Rights Act of 1964, which is made part of this Agreement by reference, and with any other applicable provision of federal or state law guaranteeing equal employment opportunity.

#### **SECTION 32. TITLES OF SECTIONS.**

Section headings inserted herein are for convenience only, and are not intended to be used as aids to interpretation and are not binding on the parties.

#### **SECTION 33. AMENDMENT.**

This Agreement may be modified or amended only by a written agreement duly executed by the parties hereto or their representatives.

#### **SECTION 34. SEVERABILITY.**

The invalidity of one or more of the phrases, sentences, clauses or section contained in this Agreement shall not affect the validity of the remaining portion of this Agreement so long as the material purposes of this Agreement can be determined and effectuated.



**SECTION 35. SUCCESSORS AND ASSIGNS.**

This Agreement shall be binding upon the parties hereto, their successors and assigns.

**SECTION 36. ENTIRETY.**

This Agreement and any Exhibits attached hereto contain the entire Agreement between the parties as to the matters contained herein. Any oral representations or modifications concerning this Agreement shall be of no force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written in (\_\_\_\_\_) counterparts each of which shall for all purposes be deemed an original.

ATTEST: BFI Waste Systems of North America, Inc.

BY: \_\_\_\_\_

Title: \_\_\_\_\_

BY: \_\_\_\_\_

Title: \_\_\_\_\_

ATTEST: County of York, Virginia

BY: \_\_\_\_\_

Title: \_\_\_\_\_

BY: \_\_\_\_\_

Title: \_\_\_\_\_

CONTRACTOR'S ADDRESS:

BFI Waste Systems of North America, Inc.  
124 Greene Drive  
Yorktown, Virginia 23692

CONTRACTOR'S FEDERAL ID NO.:

560595192

APPROVED AS TO FORM:

\_\_\_\_\_  
James E. Barnett, Jr., County Attorney

\_\_\_\_\_  
Date